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**COURT OF APPEAL, FOURTH DISTRICT**

**DIVISION TWO**

**STATE OF CALIFORNIA**

THE PEOPLE,

Plaintiff and Respondent,

v.

CRAIG ANTHONY YOUNG,

Defendant and Appellant.

E027299

(Super.Ct.No. RIF089096)

OPINION

APPEAL from the Superior Court of Riverside County. Russell F. Schooling, Judge.  
(Retired Judge of the former Mun. Ct. for the S.E. Jud. Dist., assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Michael J. Egan, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Gil P. Gonzalez and Elizabeth A. Hartwig, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Craig Anthony Young of transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a)) and possessing it for sale (Health & Saf. Code, § 11378). In bifurcated proceedings, the trial court found, as to each offense, that Young had suffered a previous drug conviction (Health & Saf. Code, § 11370.2, subd. (c)) and had suffered a prior conviction for which he served a prison term (Pen. Code, § 667.5, subd. (b)). He was sentenced to prison for seven years and appeals, claiming error in the denial of his motions for a continuance and for a new trial and in the exclusion of evidence. We reject his contentions and affirm.

#### FACTS

On December 9, 1999, 35-year-old Young was driving his ex-wife's car, which he, alone, had been using for the previous six months. His passenger was the 19-year-old female codefendant. The police stopped the car for a moving violation. Both Young and his codefendant claimed that neither had a valid driver's license, so the car had to be impounded. Methamphetamine packaged for sale and paraphernalia used to ingest it were in a fanny pack between the driver's seat and the console. A twin-beam gram scale, commonly used to weigh drugs, was under the driver's seat. A cell phone was on the passenger seat and another was in the trunk. The codefendant was under the influence of methamphetamine. Young misidentified himself to the officers who had stopped him. It was stipulated at trial that Young had personal knowledge of the nature and quality of the methamphetamine.

## ISSUES AND DISCUSSION

### 1. *Denial of Young's Motion for a Continuance*

On February 25, 2000, jury trial was set for March 6. On that day, defense counsel requested a continuance so he could call the codefendant, who had just pled guilty, to testify. The codefendant said she would testify, but not until she was sentenced, which was then scheduled for April 3. Defense counsel requested a continuance until April 14. The People opposed it, saying they were ready for trial. The trial court denied the continuance, finding that while the codefendant might implicate herself, this did not necessarily exculpate Young, because more than one person can possess contraband at the same time. The trial court also noted that it would take 60 days for the codefendant to appeal, and the court could not delay trial beyond this period.

Young here contends that the trial court abused its concededly broad discretion (*People v. Grant* (1988) 45 Cal.3d 829, 844) in denying his motion. He acknowledges that it was his burden below to show that the anticipated testimony of the codefendant was material and that it could be obtained within a reasonable time. (See *People v. Beeler* (1995) 9 Cal.4th 953, 1003.) However, Young failed to meet either burden below. He never made an offer of proof as to what the codefendant's anticipated testimony would be.<sup>1</sup>

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<sup>1</sup> Appellate counsel for Young grossly misreads the record by asserting that the codefendant testified, against her attorney's advice, as to her role in the crimes. In fact, each time a question was asked about the crimes, she invoked the Fifth Amendment. Defense counsel below, in his motion for a new trial, states, "Based on the advise [*sic*] of counsel, [the codefendant] asserted the fifth amendment to questions such as to whether she brought the drugs and scale into the car, how she brought the drugs and scale into the car,

[footnote continued on next page]

As the trial court acknowledged, her admitted involvement with the drugs did not necessarily exonerate Young. Additionally, there was no guarantee sentencing would proceed within a month. Therefore, we cannot agree with Young that the trial court acted unreasonably in denying the motion. Contrary to Young's assertion, the facts here are not remarkably different than those in *People v. Mendoza* (1992) 8 Cal.App.4th 504, which upheld the trial court's denial of a motion to continue.

## 2. *Exclusion of Evidence*

### a. *The Codefendant's Letter to Young*

Before trial began, the defense moved to introduce into evidence the letter the codefendant wrote to Young from jail.<sup>2</sup> In the letter, the codefendant referred to Young as her "homey-lover friend" and "sweet pea" and herself as his "sunshine." She discussed an apparent difference of opinion between them and explained it as a lack of communication,

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... whether she ever showed or discussed the drugs with ... Young ... [and] whether ... Young knew or could have known that she had drugs on her person." Since appellate counsel for Young here contests the trial court's ruling on this motion, we presume he must have read this. The only thing of which the trial court was aware was a letter allegedly written by the codefendant to Young on January 11, 2000, which had been submitted as part of an earlier motion to sever, but not in connection with this motion. In the letter, the codefendant assertedly says, "I hope that you won't end up hating me for getting you into this crap. I know you knew you'd ... be in trouble for violating your parole but you wouldn't be in all this trouble if it wasn't for me [and] I'm sorry! ... I should [have] never asked you for a ride knowing what I had with me but I just wasn't thinking that way[. H]opefully they'll listen to what I'm telling them." At the end of the letter, she allegedly wrote, "... I'm sorry about all of this ... ." As is clear from the foregoing, the codefendant does not even come close to exonerating Young in the letter.

<sup>2</sup> See footnote 1, *ante*, concerning the contents of this letter that are relevant to Young's guilt.

adding, “I never thought I betrayed your trust in me as a friend.” She chided him that he could trust her. She noted that she had sent him pictures of herself and her with her children and promised to send “some really sexy looking ones” when she got out of jail. She bragged about her newly enhanced breast size. She told him that she was really going to miss him “and the fun that we have together[--] . . . *all of it* . . . .” She continued, “No matter what happens through the years to come you have to promise me you’ll be my true friend[.] . . . I’d . . . feel soooo [emphasis in original] hurt if you were to ever turn your back on me, lie to me, or shy away from me again—promise? I need people like you (people who have kind [and] caring hearts)[.] I guess I might have some sort of co-dependency problem—but I’ve had nothing but pain, abandonment, and problems from basically all the important male figures in my life, and you easily became very precious to me when I needed a strong source to depend on (that’s why I call you my security blanket)[.] So know this—I’ll never betray or let you down—I’ll always be your homegirl [and] sunshine (your “baby riders)[.]” She signed the letter, “Love ya[.]”

The prosecutor argued that the letter was a clear attempt by the much younger and admittedly “codependent” codefendant to preserve her relationship with Young and “smooth things over with him,” which rendered it unreliable. The prosecutor added that the fact that the codefendant had no prior record motivated her to take all the blame for Young, who did have one. The trial court excluded the letter finding that it lacked indicia of reliability, due to the codefendant’s motive to lie in order to continue her relationship with Young. The court also excluded it under Evidence Code section 352, because it could lead

to confusion over whether the codefendant should be at trial and whether more than one person may possess an item at a given time.

Young contends that the trial court abused its discretion in excluding the letter. (See *People v. Hawthorne* (1992) 4 Cal.4th 43, 57-58.) However, he again relies upon his misreading of the record below in asserting that the codefendant, on another occasion, acknowledged her sole responsibility for the offenses.<sup>3</sup> Clearly, she never did. As we stated before, the letter did not exonerate Young. Moreover, as the trial court reasonably found, the circumstances under which it had been written, as was apparent from what was stated in the letter itself, rendered it unreliable. Finally, we are convinced that even if the letter had been admitted into evidence, there was no reasonable probability that Young would have enjoyed a better outcome, precisely for the reasons outlined by the prosecutor and trial court for its exclusion. (See *People v. Humphrey* (1996) 13 Cal.4th 1073, 1089.)

*b. Transcript of the Codefendant's Guilty Plea*

The defense sought to introduce the transcript of the codefendant's guilty plea as an admission against penal interest. The trial court excluded the evidence, finding that the codefendant's admission of transporting and possessing the drugs did not mean that she was the sole perpetrator. Young here contests the trial court's ruling. He asserts that the evidence was relevant, in that it tended to prove or disprove a disputed fact. It did not. As the trial court found, the fact that the codefendant possessed and transported the drugs did not mean that Young did not. Her possession and transportation were irrelevant to his,

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absent evidence that she was the sole possessor. Therefore, even if the evidence had been admitted, we cannot conclude that it is reasonably probable that Young would have enjoyed a better outcome.

### *3. Denial of Motion for a New Trial*

Young requested a new trial on the ground of newly discovered evidence. In support of the motion, defense counsel summarized statements the codefendant had made to her one week after the latter had been sentenced. There was no declaration by the codefendant attached to the motion, but at the beginning of the hearing on the motion, defense counsel noted that she had just given the prosecutor and the trial court copies of one.

Unfortunately, that declaration was not made part of the record before this court, nor is it listed as an exhibit in the reporter's transcript. However, the codefendant testified at the hearing.

She stated that she brought the drugs, scale and paraphernalia into Young's car in the fanny pack, which she put under a shirt between the driver's and passenger's seats. She denied ever discussing with Young the contents of the fanny pack or that she had drugs on her. She said that the last time she had had sexual relations with Young was about a month before December 9, 1999. She admitted wanting to continue their relationship when she wrote the letter, dated January 11, 2000, from jail. She admitted knowing that Young was on parole, but she had no prior record, at the time of the offenses. She admitted knowing that Young was facing prison time for these offenses. She claimed that twice she had told

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*[footnote continued from previous page]*

<sup>3</sup> See footnote 1, *ante*.

the police that the drugs were hers and not Young's. She said that someone had given her the \$400 worth of methamphetamine as a loan. She claimed that she intended to give 14 of the 20 grams to her roommate, although she denied owing the latter money.

The prosecutor pointed out that neither in their report nor when they testified did the police officers who arrested Young and the codefendant mention the latter telling them that the drugs were hers and not Young's.

The trial court ruled that the codefendant's testimony was incredible. It relied on the fact that the codefendant had never previously admitted that the drugs were hers alone and she claimed that she had been given them by someone and was going to give most of them to her roommate, neither for any apparent good reason. The trial court noted that the codefendant, having already been sentenced, was free to say whatever she wanted, which would help free Young, her paramour, without consequence to herself.

Young here contests the denial of his motion, claiming it was an abuse of discretion. However, the denial is based on the trial court's finding that the codefendant lacked credibility, a finding we are in no position to question based on the record before us. As the People correctly note, the credibility of the source of newly discovered evidence is a legitimate consideration for the trial court in determining whether to grant a new trial. (*People v. Farmer* (1989) 47 Cal.3d 888, 917; *People v. Beyea* (1974) 38 Cal.App.3d 176, 202.)

#### DISPOSITION

The judgment is affirmed.

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RAMIREZ  
P. J.

We concur:

HOLLENHORST  
J.

WARD  
J.